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MICHIGAN TOWNSHIPS ASSOCIATION

MICHIGAN MUNICIPAL LEAGUE

MICHIGAN MUNICIPAL ELECTRIC ASSOCIATION

MMEA

MICHIGAN ASSOCIATION OF COUNTIES

September 26, 2005

Mike Nofs, Chairman
House Energy & Technology Committee
Michigan House of Representatives
P.O. Box 30014
Lansing, MI

Dear Chairman Nofs:

Our respective statewide associations would like to thank you meeting with us on Thursday, September 26, 2005 to discuss draft language to limit local government's involvement in the provision of telecommunication services.

After careful review of ***House Bill 5237****, the Michigan Association of Counties, Michigan Municipal Electric Association, Michigan Municipal League, and Michigan Townships Association believe that citizens, educational institutions, hospitals, and businesses should continue to have the authority to request that their local unit of government provide them with necessary high speed and wireless internet services. We also believe that* ***House Bill 5237*** *would have dangerous implications for job creation and economic development in local communities.* ***We therefore urge you to strike Section 252 from the bill.***

WHY MUNICIPALITIES ARE ASKED TO PROVIDE BROADBAND:

Like electricity a century ago, advanced communications services and capabilities have rapidly gone from a novelty, to a luxury, to an increasingly essential service of modern life. As municipalities across the world have come to realize, communities that have advanced communications systems will be the winners in the global marketplace, and those that do not will fall behind and struggle to survive. As a result, municipalities across America, including Michigan, have begun to develop their own systems, alone or with strategic private partners, not for the purpose of competing with the private sector of these services, but because they believe that advanced systems will enable them to achieve critical community goals. These goals include:

- Stimulating robust economic development, by attracting high technology businesses and jobs and supporting the growth of existing businesses
- Spurring urban core revitalization
- Providing lifetime educational and occupational opportunities
- Enhancing public safety and homeland security
- Mitigating the "digital divide" between wealthy and low-income residents
- Improving government service and lowering taxpayers costs
- Through telework, decreasing traffic congestion and pollution, saving workers substantial amounts of money in this era of $3.00 plus gasoline prices, and increasing family communication and harmony
- Through telemedicine, making modern health care accessible to as many residents as possible
- Supporting cultural enrichment
- Facilitating local response to natural disasters
- Promoting all of the many factors that go into a high quality of life.

Section 252 of the bill would severely limit the ability of Michigan's local government entities to provide or facilitate the provision of advanced communications services, either individually or through strategic partnerships with other public and private entities. Section 252 is wholly unnecessary in view of the Legislature's enactment of the Metro Act just three years ago (PA 48 of 2002), and after extensive deliberation of the relevant issues, and it could well be preempted by emerging federal legislation. Section 252 would also retard economic development, educational and occupational opportunity, public safety, homeland security, digital equity, access to affordable modern heath care, better and less costly government services, reduction of vehicular traffic, environmental protection, cultural enrichment, and the many other benefits that contribute to a high quality of life throughout the State. Furthermore, at a time when the United States is rapidly falling behind the leading nations of the world in per capita broadband deployment, growth of bandwidth demand, availability of high-bandwidth capacity, and cost per unit of bandwidth, the people of Michigan can ill afford state barriers that preclude local government entities from contributing to the maximum possible extent to Michigan's resumption of its leadership in the world economy.

Specifically, under Section 252, local government entities cannot provide or facilitate the provision of essential "telecommunications services" until it has completed the public bidding process prescribed in the bill and waited for the private sector to begin providing the services in question several years down the road. The term "telecommunications services" is broadly defined in Section 102 (EE) as including "regulated and unregulated services offered to customers for the transmission

of 2-way interactive communications and associated usage." If a private sector provider serves even a single customer within the relevant fifteen month period, it can forever exclude local government entities from stepping forward to meet the community's needs and desires.

Many municipal electric systems were established due to the failure of private utilities to provide electrical service to smaller communities, which were viewed as unprofitable. If a law such as Section 252 had been in effect in Michigan a century ago, public power utilities would never have taken hold, and numerous communities in Michigan would have lagged behind other cities across America in obtaining the benefits of electricity. Today, in states that do not have barriers to public entry, including Michigan, local communities are doing in the communications area what they did so successfully in the electric industry – i.e., filling service gaps and facilitating competition where service is inadequate or too expensive.

PRESIDENT BUSH SUPPORTS MUNICIPALITIES PROVIDING BROADBAND:

President Bush also observed that municipalities have an important role to play in restoring America's global ranking. Speaking of the new municipal wireless system in Spokane, Washington, President Bush observed:

> Cities are [taking advantage of broadband technology.] Spokane, Washington, yesterday established a wi-fi hot zone that allows users within a hundred block area of the city to obtain wireless broadband access. Imagine if you're the head of a chamber of commerce of a city, and you say, 'Gosh, our city is a great place to do business or to find work. We're setting up a wi-fi hot zone, which means our citizens are more likely to be more productive than the citizens from a neighboring community. It's a great opportunity . . . [T]his is a very exciting opportunity.[12]

UNITED STATES FALLS SHORT IN BROADBAND:

It is an unfortunate and undeniable fact that America is failing to develop the broadband infrastructure that will be necessary to maintain its position of leadership in the emerging global economy, and the time for turning this situation around is rapidly running out. As a nation, we simply do not have the luxury of time to wait for the private sector alone to meet pressing local communications needs. In particular, we do not have time for processes such as the one outlined in Section 252 to run their course. Rather, if America is to avoid becoming a second-class power in the decades ahead, we must act promptly and wisely, taking maximum advantage of every available resource, including our national treasure of 2000 public power utilities.

Just four years ago, the United States ranked 4th in the world in per capita broadband penetration. Soon afterward, America's global ranking in per capita broadband penetration began to decline, and we also began to lose ground to other leading nations, particularly South Korea and Japan, in access to high-bandwidth capacity and cost per unit of bandwidth. In April 2004, President Bush responded by calling for "universal, affordable access for broadband technology by the year 2007 ... to make sure we give Americans plenty of technology choices when it comes to purchasing broadband."[13]

By mid-Summer last year, America had sunk to 10th or 11th place, depending on whose study one consulted. This low ranking annoyed President Bush:

> America ranks 10th amongst the industrialized world. That's not good enough. We don't like to be ranked 10th in anything. The goal is to be ranked 1st when it comes to per capita use of broadband technology. It's in our nation's interest. It's good for our economy.[14]

America's declining global broadband status also dismayed Federal Communications Commissioner Michael Copps. In September 2004, Commissioner Copps dissented from the FCC's rosy report to Congress on the status of America's deployment of advanced telecommunications capabilities:

> Recently, we heard an announcement from the very top of our government that our goal is universal broadband access by 2007. But we are not making acceptable progress toward that goal. Yes, there are good stories in these glossy pages. Schools and libraries enjoy broadband access like never before. New technologies offer new promise. Strides are being made in some rural communities. Companies are working hard.
>
> Still, one glaring fact stands out: the United States is ranked eleventh in the world in broadband penetration! This Report somehow finds that this is acceptable, and that our efforts are resulting in timely deployment. I think our efforts are insufficient and that broadband deployment is insufficient, so we dissent with this Report.
>
> When consumers in other countries get so much more bang for their broadband buck than we do, something has to change. Nothing puts our challenge into more vivid relief than Chart 18 in this Report. In Japan, for as little as $10, consumers get broadband service at 8,000 kbps. In Korea, consumers get 10,000 kbps for the same price that we pay for 1,500 kbps. Consumers elsewhere get great prices for revolutionary speeds. Why, then, is the FCC still collecting data about 200 kbps service and calling it broadband? Our dated definition of broadband speed should have been dropped by the wayside long ago.
>
> We also claim that broadband is available to everyone in a zip code if it is offered to only one person in that zip code. This half-hearted effort at analyzing availability should be scrapped. Correcting these approaches for the *next* Report is neither reasonable nor timely.

Since the release of this report, America has tumbled further and now ranks 16th place in broadband penetration. The United States has also fallen further behind in access to high-capacity bandwidth, bandwidth cost, and growth of bandwidth usage.[15] As Thomas Bleha noted in *Foreign Affairs*,

> When the United States dropped the Internet leadership baton, Japan picked it up. In 2001, Japan was well behind the United States in the broadband race. But thanks to top-level political leadership and ambitious goals, it soon began to move ahead. By May 2003, a higher percentage of homes in Japan than in the United States had broadband, and Japan had moved well beyond the basic connections still in use in the United States. Today, nearly all Japanese have access to "high-speed" broadband, with an average connection speed 16 times faster than in the United States -- for only about $22 a month. Even faster "ultra-high-speed" broadband, which runs through fiber-optic cable, is scheduled to be available throughout the country for $30 to $40 a

month by the end of 2005. And that is to say nothing of Internet access through mobile phones, an area in which Japan is even further ahead of the United States.[16]

BUSINESS SECTOR SUPPORTS MUNICIPAL BROADBAND:

With America's global leadership in manufacturing and commerce at risk, it is critically important that we move quickly to retool our businesses, institutions and residents to ensure that we will continue to have a place at the head table in the world economy. The Institute of Electronic and Electrical Engineers (IEEE-USA's), a highly respected impartial professional organization, recently suggested a realistic and prudent agenda to achieve this, stressing the importance of gigabit fiber networks and the necessity of municipal involvement in helping to develop them:

> A new generation of broadband, or "gigabit networks," can mean significant benefits to the United States, but our nation must act promptly to ensure that such an infrastructure is ubiquitous and available to all. If we do not act, the consequence will be to relegate the U.S. telecommunications infrastructure to an inferior competitive position, thus undermining the future of our country's economy. This issue demands the attention of policymakers as well as the public at large
> ...
> The U.S. economy is based on knowledge — its creation, dissemination and application. A knowledge economy uniquely creates new wealth through invention and innovation. Development depends on research that depends on access to the entire body of existing knowledge and the rapid exchange of new knowledge throughout the economy and the society. Modern research typically retrieves, creates and exchanges massive information files at gigabit rates. After the research, many follow-on functions will benefit from gigabit networks, including computer-aided design; integration of design, manufacturing, sales, and distribution; and collaboration among all through high quality video conferencing.
> ...
> ...Seamless and rapid communication permits easy access to all knowledge — scientific, medical, economic, commercial, educational, political and recreational. Through ubiquitous gigabit networks the entire U.S. population, urban and rural, could contribute fully to developing our nation's standard of living while overcoming a digital divide that now forecloses productive activity by those without such access.
> ...
> ...U.S. broadband networks badly lag behind those of many other countries. By one measure, 19 countries have broadband service superior to that of the United States. U.S. maximum public broadband capabilities by DSL and cable modem are in the range of 1 to 5 Mb/s downstream to the user, but generally 500 kb/s or less upstream. By contrast, most South Korean residents have access to 50 to 100 Mb/s, which in many cases is symmetric. South Korea achieved this infrastructure through a government policy supporting deregulation, competition and investment.
> ...
> ...The aforementioned countries achieved the high penetrations and high capabilities partly because of high population densities and short copper loops, conditions that are more favorable than those in the United States. ***Nonetheless, these countries have set the bar and we must surmount it, if we are to maintain our current world lead in the creation and use of knowledge goods.***

Among IEEE-USA's specific suggestions of ways for America to stay abreast of the other leading nations are the following:

> • Eliminate anticompetitive legal and regulatory challenges to the deployment of end-user owned networks
> • Give municipalities that deploy gigabit networks broader access to such programs as the Rural Utility Service and the Universal Service Fund[17]

IEEE-USA's support for municipal involvement in broadband deployment mirrors that of a growing number of high technology companies and their trade associations. As incumbent telephone and cable providers have sought to obtain state legislation to thwart municipal broadband initiatives, the high technology industry has become increasingly vocal in opposing such measures. The following passage from the High Tech Broadband Coalition's policy statement on municipal broadband is typical of such efforts:

> In summary, HTBC opposes state laws that erect explicit or de facto barriers to municipal participation. Municipalities must be allowed to pursue broadband network solutions, and private sector firms must not be foreclosed from choosing to invest in and partner with municipalities. A framework of open processes and reasonable competitive neutrality allows all stakeholders to be heard. Reasonable examples are already being demonstrated in the marketplace voluntarily and without statutory mandates. We believe such a framework can encourage public-private partnerships that advance the goal of making affordable and high quality broadband available to all Americans.[18]

CONCLUSION:

For the above reasons, MAC, MMEA, MML and MTA respectfully request that you strike Section 252 from **House Bill 5237** legislation that would hurt consumers, and the local governments we all call home.

Thank you for taking the time to consider this matter.

Respectfully Yours,

Michigan Association of Counties Michigan Municipal Electric Association

Michigan Municipal League Michigan Townships Association

[1] R. Starner, "Wired Cities," *Site Selection Online* (January 2001), http://www.siteselection.com/issues/2001/jan/p43/.

[2] K. Kahn, "Getting Enough Fiber in Tacoma, WA," *Business Facilities* (February 2002), http://www.facilitycity.com/busfac/bf_02_02_move.asp.

[3] John Peters, "City Looks to Broadband to Grow Economy," *Virginia Business* (January 2004), http://www.virginiabusiness.com/magazine/yr2004/jan04/bristol.shtml.

[4] "Senators Secure Economic Development Dollars," *Bend.com* (January 22, 2004), http://www.bend.com/news/ar_view.php?ar_id=13325.

[5] "Google search hits on acreage in The Dalles," *The Oregonian* (February 18, 2005), http://www.oregonlive.com/printer/printer.ssf?/base/business/1108733176202430.xml

[6] C. Kahn, "Danville Area Looks To Move From Tobacco, Textiles To Tech," Virginia Tobacco Commission (March 10, 2003), http://www.vatobaccocommission.org/Tobacco%20Clips%203-10-03.doc.

[7] See, e.g., "Heartland Goes High Tech," Sight Selection Online (November 2001), http://www.siteselection.com/features/2001/nov/midwest/pg03.htm.

[8] E. Vos, "Scottsburg, IN, Municipal Wireless Network Saves the Community," *Muniwireless.com* (May 1, 2004), http://www.muniwireless.com/archives/000315.html.

[9] D. Isenberg, "Connectivity Spells J.O.B.S.," *Isen.blog* (November 19, 2004), http://isen.com/blog/2004/11/connectivity-spells-jobs.html.

[10] J. Snow, "Broadband Scarcity Hurts Economic Development," *Jacksonville Business Journal* (May 16, 2003), http://jacksonville.bizjournals.com/jacksonville/stories/2003/05/19/story7.html.

[11] The Whitehouse, President Bush: High Tech Improving Economy, Health Care, Education (June 24, 2004),

http://www.whitehouse.gov/news/releases/2004/06/20040624-7.html

[12] The Whitehouse, President Bush: High Tech Improving Economy, Health Care, Education (June 24, 2004),

http://www.whitehouse.gov/news/releases/2004/06/20040624-7.html

[13] White House, "A New Generation of American Innovation" (April 2004), http://www.whitehouse.gov/infocus/technology/economic_policy200404/innovation.pdf.

[14] President Bush, "High Tech Improving Economy, Health Care, Education" (June 24, 2004), http://www.whitehouse.gov/news/releases/2004/06/20040624-7.html.

[15] "ITU [International Telecommunications Union] has just released its new statistics on global broadband penetration per 100 inhabitants as of 1 January 2005. Korea and Hong Kong, China have kept the top rankings they received in 2004. The Netherlands makes an impressive move from 9th in ranking in 2004 to 3rd this year. Denmark also moves up two slots to 4th. Canada drops to 5th from 3rd in 2004. Switzerland moves from 10th in 2004 to 6th this year. Israel moves to 12th this year. The USA drops from 13th in 2004 to 16th in 2005. France has moved up fast in the rankings and is now just behind the USA followed by the UK at 15th." http://www.itu.int/osg/spu/newslog/ITUs+New+Broadband+Statistics+For+1+January+2005.aspx.

[16] T. Bleha, "Down to the Wire," *Foreign Affairs* (May/June 2005), http://www.foreignaffairsiggnaffairs.org/20050501faessay84311/thomas-bleha/down-to-the-wire.html?mode=print; see also

[17] IEEE-USA, *Providing Ubiquitous Gigabit Networks in the United States*, http://www.ieeeusa.org/volunteers/committees/ccip/docs/Gigabit-WP.pdf.

[18] Numerous samples of industry statements supporting municipal broadband initiatives are collected at http://www.baller.com/comm_broadband.html.